Nos. 7 to 13

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CHARLES

Supreme Court of the United States

OCTOBER TERM, 1930.

NO. 687.

CUMBERLAND COAL COMPANY, Petitioner,
v.
BOARD OF REVISION OF TAX ASSESSMENTS IN GREENE COUNTY, PENNSYLVANIA.

NO. 688.

CUMBERLAND COAL COMPANY, Petitioner,
v.
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NO. 691.

HENRY A. PHILLIPS, Petitioner,
v.
BOARD OF REVISION OF TAX ASSESSMENTS IN GREENE COUNTY, PENNSYLVANIA.

NO. 692.

PIEDMONT COAL COMPANY, Petitioner,
v.
BOARD OF REVISION OF TAX ASSESSMENTS IN GREENE COUNTY, PENNSYLVANIA.

NO. 693.

GREENE COUNTY COAL COMPANY, Petitioner,
v.
BOARD OF REVISION OF TAX ASSESSMENTS IN GREENE COUNTY, PENNSYLVANIA.

On Writs of Certiorari to the Supreme Court of the State of Pennsylvania.

BRIEF FOR RESPONDENT.

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I.

COUNTER-STATEMENT OF CASE.

The statement of the case appearing in the Brief for Petitioners, when considered in the light of the facts appearing in the Record, is so misleading and unfounded in fact that respondents, in order that this court may see

at a glance the issue that was tried in the Common Pleas and was appealed to and determined by the Supreme Court of Pennsylvania, feel justified in stating the following counter-statement of the case.

The assessors throughout the various townships of Greene county, Pennsylvania, in the triennial assessment of 1928 valued all taxable property at what they considered to be the actual value thereof and at such rates and prices for which the same would separately bona fide sell and assessed the same at a ratio of fifty per cent of assessed to actual value.

> The assessors in Cumberland township and throughout the County of Greene did not assess land of any character, farm lands, dwelling houses, business property or coal at its actual selling value or actual market value or at the actual price or sum which lands would bring at public sale after full public notice, but they did attempt to assess all lands at a ratio of fifty per cent of its actual value limited and defined by market value throughout the county and in the township of Cumberland. (Finding of Fact 18, R. 293).

Appellants in the court below did not except to this finding of fact, nor was it assigned as error in the Supreme Court of Pennsylvania, which court by opinion filed found that such ratio had been uniformly fixed:

> The fifty per cent ratio through the county having been uniformly fixed * * * (R. 604).

The Board of Revision carefully examined and corrected the valuations of all taxable property as returned by the assessors of the various townships and adopted the same ratio of assessed to actual value.

> No minute of their adoption of the fifty per cent ratio was made, but it was actually used by the

Board of Revision in making the assessment in this case. (Finding of Fact 20, R. 294).

Appellants in the court below did not except to this finding of fact, nor is it assigned as error in the Supreme Court of Pennsylvania, which finding the Supreme Court of Pennsylvania sustained (R. 604).

Petitioners appealed from the action of the Board of Revision.

4. Your petitioner avers that said assessment is unjust and inequitable for the following reasons:

(a) Said Assessors and Commissioners have discriminated against your petitioner in favor of the owners of other classes of taxable property within said county by assessing the coal of your petitioner at a higher relative rate than the other classes of real estate are assessed, and as a result the said coal of your petitioner will be required to pay an unjust, unfair and undue proportion of the taxes levied and assessed by the Commissioners of said County and by the School Directors and Supervisors of said Township.

(b) The valuation placed upon said coal of your petitioner is unjust, inequitable, discriminatory and lacks uniformity, as the said Commissioners have assessed all coal in the same township (except what is termed "actual coal") at the same valuation, regardless of the remoteness or accessibility of the said coal to market, cost of operation, or means of transportation and regardless of the difference in value and without due regard to the valuation and assessment of other coal and other classes of real estate in the County of Greene (R. 5-6).

At the hearing of these seven appeals in the trial court no testimony was offered by petitioners to show that the

assessments as made, and from which they appealed and of which they now complain, were in excess of the uniform and standard ratio adopted and applied generally throughout the entire county, that is, fifty per cent of the fair market value of their property.

Petitioners relied wholly upon testimony by which they sought to prove that two other tracts of coal in Cumberland township were assessed below the uniform and standard ratio adopted and applied generally throughout the county. Petitioners relied wholly upon a comparison of their assessments with the assessments of the coal of Buckeye Coal Company and Crucible Fuel Company located in Cumberland township and petitioners did not then, and do not now, assert that the assessments of their property is higher than the uniform and standard ratio of fifty per cent of assessed to actual value as adopted and applied generally throughout the county.

Respondents deny that:

> The question presented in these seven cases is whether the plan of assessment of coal property for taxation pursued by the Commissioners of Greene county, Pennsylvania, sitting as a Board of Revision is violative of the equal protection clause of the Fourteenth Amendment of the Constitution of the United States (Brief for petitioners, p. 3).

On the contrary respondents assert, and the record of the seven cases in the Pennsylvania courts conclusively show, that the only question for decision in each case in this court is:

Is the assessment of petitioners' coal in excess of the uniform and standard ratio of fifty per cent of assessed to actual value adopted and applied generally by the Board of Revision throughout Greene county?

II.

STATEMENT OF QUESTIONS INVOLVED.

1. Does an assessment of taxable property discriminate which is made by the taxing authorities in good faith and in conformity with the uniform system throughout the state?

2. Will the Supreme Court of the United States interfere with a given assessment in any state when it is not shown that such assessment was systematically, intentionally and arbitrarily discriminatory and adopted as a practice, and this without regard to what plan or system of assessment was used by the taxing authorities in arriving at such assessment?

3. By what means may the legality of an assessment be tested,—by comparison with the assessment of one or two tracts or parcels of like property in the same township, or by comparison with the general assessment of all taxable property in the county?

4. Do petitioners have standing to complain where the record shows that a uniform standard ratio of fifty per cent of assessed to actual market value was adopted generally throughout the county when they fail to show that their properties are assessed at above fifty per cent of their actual market value?

III.

ARGUMENT.

The Plan of Assessment Adopted by the Board of Revision Does Not Violate the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States.

(a) Pennsylvania System of Assessment for Taxation.

It is difficult for respondents to understand the position of petitioners.

In the trial court the question at issue was whether the assessors and commissioners had, or had not, discriminated against petitioners in favor of the owners of other classes of taxable property within the county.

The trial court found that petitioner's coal lands were assessed in accordance with the uniform and standard ratio adopted and applied generally throughout the county upon all classes of taxable property (R. par. 5, p. 4 a).

The record of these seven appeals in the Supreme Court of Pennsylvania shows that this same question was there considered and adjudicated (R. 620).

In both the trial and appellate courts the system of assessments was an incident only to the main question at issue.

In this court petitioners have abandoned the question tried in and adjudicated by the state courts and, as

the basis of their claim now attempt to make out that the system of assessment is violative of the equal protection clause of the Fourteenth Amendment of the Constitution of the United States (R. 615).

Of course, the failure of petitioners to prove in the trial court that their properties were not assessed at more than fifty per cent of their actual market value explains their reason for this change but, nevertheless, respondents assert that this change of position is not justified. This court will pass upon only the questions presented to and adjudicated by the Pennsylvania courts.

For this court to find that the plan or system of assessment in Pennsylvania might result in inequalities or discriminations without at the same time finding that the plan or system of assessments did, as a matter of fact, result in inequalities and discriminations against the petitioners in the assessments from which they appealed, would be futile.

It will not be denied that the Commonwealth of Pennsylvania has a uniform and standard system of assessment for all classes of taxable property. If the assessments in question were made in accordance with this uniform and standard system petitioners have no just complaint.

The Constitution of Pennsylvania provides that all taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax.

The territorial limits of the authority levying the tax is the county. *Lehigh & Wilkes-Barre Coal Co. v. Luzerne Co.*, 225 Pa. 267.

Section 4, Act May 15, 1841, P. L. 393 (Pennsylvania Statutes 1920, section 20590, quoted in the petition for writs of certiorari, Appendix p. 27), provides that it shall be the duty of the several assessors to assess, rate and value all objects of taxation, whether for state, county, city, district, ward, township or borough purposes according to the actual value thereof, and at such rates and prices, for which the same would separately bona fide sell and return such assessment or valuation into the office of the county commissioners, after the same shall have been carefully examined and corrected it shall be lawful for said commissioners, if they believe any property or thing made taxable has been assessed and valued below its actual value to raise the same to the actual value thereof or if the same has been assessed and valued above its actual value, to reduce the same thereto. Provided, that in no case the said commissioners shall impose a different rate per centum on different townships in their county, but the same shall be equal throughout and all rates shall be levied on the assessment as returned and corrected.

Petitioner's taxable property is the Pittsburgh or River Vein of coal and in the coal districts is commonly called *"coal land"*. This coal vein is general and is of uniform thickness and quality throughout Greene county (Findings of Fact 7, R. 357).

If, however, the record of these seven cases shows that the assessments complained of were not made in accordance with such uniform and standard system of assessments but were intentionally and arbitrarily made and injury resulted to petitioners thereby, then petitioners would be entitled to relief from such assessments.

This court, however, will not undertake to correct an isolated case unless it is shown by evidence suffici-

ently clear to establish that the Board of Revision entertained or is chargeable with an intentional purpose or design to discriminate.

The Legislature of Pennsylvania has fixed the unit of assessment to be the county and the standard of measurement to be the actual value of the subject assessed.

The courts of Pennsylvania have uniformly held that the Board of Revision may fix a ratio of assessed to actual value generally throughout the county or district and that such ratio generally applied is a compliance with the law.

Phila. & Reading C. & I. Co. v. Northumberland Co. Com., 229 Pa. 460;
Penna. Coal Co's. Assessment, 257 Pa. 320.

This court, in *Kelly v. City of Pittsburgh*, 104 U. S. 78, held that the various states have the legal right to fix the unit of taxation and this court will not interfere so long as the assessments within such unit are uniform.

This court has held that the provisions of the equal protection clause of the Fourteenth Amendment to the Constitution of the United States do not prevent a state from adjusting its system of taxation in all proper and reasonable ways, or compel a state to adopt an iron rule of equal taxation. And it is not the policy of this court to interfere with the revenue laws of the states.

Bells Gap R. Co. v. Pennsylvania, 134 U. S. 232;
F. & Bank v. Pennsylvania, 167 U. S. 463;
New Orleans City & L. R. Co. v. New Orleans, 143 U. S. 192;
Memphis Gas L. Co. v. Tax Dist. of Shelby Co., 109 U. S. 398.

(b) Petitioners' Change of Position.

On the trial of these seven cases in the court below petitioners attempted to show that the assessment placed upon their coal was unjust, inequitable, discriminatory and lacks uniformity, it having been assessed without regard to remoteness or accessibility to market, cost of operation or means of transportation and regardless of the difference in value of other coal and other classes of real estate in the county.

In this court petitioners have abandoned their position and now seek to show intentional and arbitrary discrimination by the plan or system of assessment.

The discrimination in this plan or system of assessments, and of which petitioners now complain, relates to coal only, whereas the plan or system of assessments adopted by the Board of Revision covers and embraces the assessments of all taxable property, farm land, dwelling and business houses and vacant lots as well as coal lands. Petitioners admit here that all taxable property in Greene county was assessed at the uniform and standard ratio of fifty per cent of assessed to actual value, except possibly a few isolated tracts or parcels of coal land. Petitioners attempt to show intentional and arbitrary discrimination in the assessment of their coal land by quoting, in part, from the testimony of county commissioners J. N. Scott and Paul Debolt (Brief for petitioners, pp. 7, 8 and 9).

The testimony quoted is correctly quoted but it is misleading when viewed and considered in the light of the entire testimony of County Commissioners J. N. Scott and Paul Debold, a part of which respondents quote as follows:

On cross examination by Mr. Samuel McClay (R. 174-175), Mr. J. N. Scott testified:

"Q. What did you regard the coal fronting on the River in Cumberland Township would be worth?

A. Depend on what purpose you would hold it. Certain amount of river front is an advantage.

Q. How much river front?

A. Sufficient for plant.

Q. Would not need any more than that?

A. Do not see why they would.

Q. If we were trying to get into the coal how much river front would you allow for a particular value in excess of the coal back?

A. Usually only enough for one opening, that does not take very much room.

Q. How much does it take?

A. Half mile of river front would be all any company could use.

Q. Extending back how far?

A. It would be no disadvantage how much they had. I am not going to give you inside plan of a coal mine.

Q. What is your idea of the value of coal fronting on the river and to what extent going back that value is?

A. The value of coal on the river where it is navigable is undoubtedly greater than that back especially if the company ships it by water. Buckeye puts itself in the same class as Mather because they both ship by rail and Mather is no ways near the river and in that case the river does not seem to be an advantage to Buckeye except the coal is nearer the surface there.

Q. Now Mr. Scott I am trying to get at what purchasers would want and what would enter into

their mind in making purchases of coal. You have talked about the average price of $600.00, will you tell us what the front coal two or three miles extending back and having a frontage of about two miles on the river would be worth?

A. The front coal might get very valuable. It certainly would not be less than $1000.00, it would depend on circumstances, by carrying the front at $1000.00 and the back at $500.00 it would get an average of $750.00."

On direct examination by Mr. Waychoff (R. 180), Mr. Debolt testified:

"Q. Does not make any difference to your judgment whether coal lies 6, 8 or 10 miles back, or right along by the side (of Monongahela River)?

A. Yes, but if you have an opening to the river it don't need so much river frontage."

There is nothing in the record that shows that the plan or system of assessments resulted in discrimination in the assessment of the petitioners' coal land. The only testimony offered by petitioners that might even tend to show discrimination is the testimony in regard to petitioners' coal land in Cumberland township and all this testimony relates not to a comparison of the assessment of their property with the general uniform assessments throughout the county but by a comparison of the assessment of their coal land with the assessment of a few, one or two, certain isolated tracts or parcels of coal lands located in Cumberland township and adjoining the coal land of petitioner, Cumberland Coal Company, therein.

In *Sunday Lake Iron Co. v. Wakefield Township,* 247 U. S. 350, a case seemingly relied upon by the peti-

tioners as in point with the cases at bar, the matter for consideration was the claim that contrary to the equal protection clause of the Fourteenth Amendment to the Constitution of the United States the State Board of Tax Assessors, which assessed the property of the Iron Company in 1911, assessed the same at full value whereas other lands throughout the county were generally assessed at not exceeding one-third of their actual worth. This fact was admitted.

But this court, Mr. Justice McReynolds in delivering the opinion, said:

> "The purpose of the equal protection clause of the Fourteenth Amendment is to secure every person within the State's jurisdiction against intentional and arbitrary discrimination whether occasioned by express terms of a statute or by its improper execution through duly constituted agents. And it must be regarded as settled that intentional systematic under-valuation by state officials of other taxable property in the same class contravenes the constitutional right of one taxed upon the full value of his property. *Raymond v. Chicago Union Traction Co.*, 207 U. S. 20, 35, 37. It is also clear that mere errors of judgment by officials will not support a claim of discrimination. There must be something more—something which in effect amounts to an intentional violation of the essential principle of practical uniformity. The good faith of such officers and the validity of their actions are presumed; when assailed, the burden of proof is upon the complaining party. (Citing many cases.)
>
> The record discloses facts that renders it more than probable that plaintiff in error's mines were assessed for the year 1911 (but not before or afterwards) relatively higher than other lands within

> the county although the state enjoined the same rule for all. But we are unable to conclude that the evidence suffices clearly to establish that the state board entertained or is chargeable with any purpose or design to discriminate. Its action is not incompatible with an honest effort in new and difficult circumstances to adopt valuations not relatively unjust or unequal. * * *"

An inspection of the record of these seven cases will convince this court: (a) That petitioners' property was assessed upon the same uniform and standard ratio of fifty per cent of assessed to actual value as adopted and applied generally throughout the county of Greene; (b) That there is not a word of testimony therein that shows, or tends to show, that the Board of Revision in making the 1928 triennial assessment is chargeable with any purpose or design to intentionally and systematically overvalue petitioners' property or to undervalue like property of others in the same neighborhood; (c) That there is nothing in the record which in effect amounts to an intentional violation of the essential principle of practical uniformity, or that the Board of Revision by the assessment in question denied petitioners the equal protection provided by law.

Hence, this court must conclude, as it concluded in the Sunday Lake case, that the evidence in these seven cases does not establish that the Board of Revision in making the 1928 triennial assessment entertained, or is chargeable with any purpose or design to discriminate or that its action is not incompatible with an honest effort to adopt valuations not relatively unjust or unequal.

(c) Township Method of Assessment.

Petitioners have conceived the idea that coal land in a single township should be divided into two or more zones and assessed and valued with reference to its proximity to or remoteness from the Monongahela River.

No such plan of assessment of coal lands has been adopted by the taxing authorities of any county within Pennsylvania or elsewhere and no such method can be legally adopted under the present laws of Pennsylvania. The plan or system of assessment here complained of is the plan or system adopted throughout the state of Pennsylvania.

Mr. George S. Baton, an expert coal engineer, called by petitioners in the hearing of these appeals in the court below, on cross examination testified (R. 69):

"Q. Are you acquainted with developments (assessments) in Washington County?
A. Yes.
Q. Is it by townships as in Greene?
A. Yes.
Q. Are you acquainted with the method of assessment as in Fayette county?
A. Yes.
Q. Is it in townships as in Greene?
A. I think so.
Q. In Westmoreland, are you acquainted?
A. I am.
Q. Is it by townships as in Greene?
A. Yes I should say it was.
Q. Do you know of any county in the state of Pennsylvania where the zoning system which you recommend has been adopted?

A. I don't know of any county similarly situated to Greene county.
Q. Do you know of any county in the United States that should (has been) zoned as you say Greene County should be zoned?
A. I don't know of any."

Mr. John M. Rayburn, another expert coal engineer called by petitioners in the hearing of these appeals in the court below on cross examination testified (R. 131):

"Q. Your idea is it should be assessed in zones about three miles in width?
A. Yes.
Q. Do you know how other counties in the state assess as to zones or townships?
A. Most all other counties assess in townships.
Q. Do you know any counties that assess in the manner you propose should be done?
A. I do not. In a general way they have a uniform price in Fayette County, while it is assessed by townships it is uniform.
Q. That is because it is farther developed?
A. I would not say that.
Q. Do you mean to tell me it is more uniform than in Greene county?
A. The valuation is."

From this testimony of petitioners' expert coal engineers it is manifest that the assessments in these cases were in strict conformity with the plan or system of assessment of coal land throughout Pennsylvania.

Petitioners' sole complaint is that their coal lands are assessed and valued at a higher relative rate of valuation than certain other isolated tracts of coal lands. They disregard entirely the admitted fact that all the

thousands of other taxable properties, farm lands, dwelling and business houses, vacant lots and all other coal lands in Greene county are assessed in conformity with the uniform and standard plan or system of assessment adopted generally throughout the county.

Again we call this court's attention to the testimony of Mr. George S. Baton (R. 78):

"Q. You are not undertaking to say $260.00 is too high, you are saying that the comparative value between it (Cumberland Township) and Monongahela Township is too high?

A. Yes, sir."

This comparison of petitioners' assessments with the assessments of certain isolated tracts was used by all petitioners' witnesses.

Respondents, without fear of contradiction, assert that the record will show that the market value of petitioners' coal lands in each and every township from the assessment of which petitioners appeal is more than double the assessed value thereof as fixed and determined by the Board of Revision.

(d) Petitioners' Exhibit "B"—What It Shows.

On the trial of these appeals in the court below petitioners offered in evidence generally the map, a copy of which is attached to their brief filed in this court, and having offered the map in evidence generally it is competent for any and all purposes. While this map is misleading because of the fact that the coal lands of Cumberland Coal Company from the assessment of which they have appealed is marked in colors and the coal lands of Cumberland Coal Company in Whiteley,

Franklin, Jefferson and Monongahela townships and in certain boroughs is not marked in color, yet it shows the coal lands of petitioner Cumberland Coal Company, located in Cumberland Township to consist of one contiguous block of 9237 acres; in Greene township 11956 acres, (practically all the coal in said township except that owned by H. C. Frick Coke Company); in Perry township 3126 acres and in Wayne township 6012 acres. Cumberland Coal Company appealed from the assessment of its coal land in each of the four named townships.

In addition to this acreage of coal land this map shows, although not marked in colors, that Cumberland Coal Company owns 18429 acres in Whiteley township, (all the coal in said township); 804 acres in Dunkard township; 1924 acres in Monongahela township; 3924 acres in Franklin township; 7800 acres in Jefferson township; 63 acres in Jefferson Borough; 412 acres in Rices Landing Borough and 39 acres in Carmichaels Borough. Thus, this map shows that Cumberland Coal Company owns one contiguous block of 64,793 acres of coal lands in these various townships and boroughs.

This map further shows that petitioner Henry A. Phillips owns 6900 acres of coal land in Wayne township; Piedmont Coal Company owns 3955 acres of coal lands in Wayne township and Greene County Coal Company owns 3207 acres of coal land in Perry township. No appeals were taken from the assessments in Whiteley, Franklin, Monongahela and Jefferson townships or in Jefferson and Rices Landing borough.

Had Cumberland Coal Company taken appeals from the assessment of its coal land in Jefferson or Monongahela townships, or in Rices Landing Borough, any one or

all, such appeal or appeals would have disclosed the fact that Cumberland Coal Company owns a large frontage on the Monongahela River and the Chartiers Southern Railroad, which is a part of the contiguous block of coal land of 64,793 acres above mentioned and making available to market the entire block of coal of the company by both river and rail transportation, and thus said company gained the benefits of such frontage, if such frontage is of benefit.

(e) Admission of Mr. Samuel McClay.

On the trial of these cases Mr. Samuel McClay, President of Cumberland Coal Company, admitted (R. 79), that a majority of the stock of the H. C. Frick Coke Company is owned by the United States Steel Corporation and nearly all of the shares of the Cumberland Coal Company are owned by the United States Steel Corporation and that the H. C. Frick Coke Company is an operating company and the Cumberland Coal Company is not at present an operating company.

This admission having been made, exhibit B, attached to Brief for Petitioners, shows that H. C. Frick Coke Company owns 2607 acres of coal land in Jefferson Township, 32 acres in Rices Landing Borough and 2191 acres of coal land in Monongahela Township, all of which coal land in both townships and in the borough of Rices Landing in contiguous to the coal lands of Cumberland Coal Company in Greene, Cumberland and Jefferson Townships and Rices Landing Borough. This exhibit shows that the coal land of H. C. Frick Coke Company in Jefferson Township and Rices Landing Borough has miles of frontage on the Monongahela River and upon the Chartiers Southern Railroad.

Where coal is held in large contiguous blocks it is so assessed in the township in which it is located. In fact the identity of the various tracts comprising a block has been long since lost to the taxing authorities. Owners of large blocks of coal insist that it be assessed as a single block of the total acreage and the taxing authorities have complied with their request and adopted their methods, using the township as the unit for assessment unless single tracts of a block be divided by county, township or borough lines in which case, under the provisions of the Act of April 27, 1903, P. L. 326 (Appendix, p. 22) assessment is made of the parts as located.

The fact that petitioners' coal land are in large contiguous blocks of such size as to justify large expenditures in the development thereof and the fact that the coal of the petitioners is contiguous and is capable of being handled or dealt as one property gives additional value to every acre of coal therein over and above the value of small parcels of coal held by separate owners in the same township and with which separate and isolated tracts or parcels of coal lands petitioners now seek to compare values.

(f) Conclusion.

The good faith of the Board of Revision and the validity of their action in making the triennial assessment of 1928 is presumed until the contrary is shown and the contrary is not shown in these cases.

When the good faith of the Board of Revision is assailed the burden of proof is upon the complaining party. And in the cases at bar there is no evidence to show that the Board of Revision in making the 1928 assessment systematically and intentionally discriminated against petitioners and in favor of the owners of other

classes of property and petitioners have not shown that the assessment if discriminatory in any respect was systematically and intentionally discriminatory and adopted as a practice by the Board of Revision in making the 1928 triennial assessment.

An examination of the record will convince this court that respondents proved in every instance of assessment of petitioners' coal lands that the actual value was double, or more than double, the assessed value.

The court below found this to be a fact and on appeal to the Supreme Court of Pennsylvania, Mr. Justice Shaffer, delivering the opinion (302 Pa. 179 at p. 182), said:

> "None of the appellants has shown that its or his property in the market is not worth double the assessment fixed by the county commissioners and court below. Since they fixed fifty per cent of market value as they conceived it to be, appellants without showing a less value for their properties have no standing to complain."

Upon the whole record respondents submit that the motion to dismiss and quash the writs of certiorari in each of these seven cases should prevail and the writs of certiorari dismissed, or on the merits the judgment of the Court of Common Pleas of Greene County and the Supreme Court of Pennsylvania should be affirmed.

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Dated at Waynesburg, Pa.

IV.

APPENDIX.

Determining the place of the assessment of coal and minerals underlying seated lands where divided by county, township or borough lines.

Act of April 27, 1903, P. L. 362 (*Purdon's Digest,* 13 ed. vol. 4, page 4630. West. Stat. 1920, sec. 20600, page 2005).

> "That from and after the passage of this act, the assessors of the townships and boroughs of the several counties of this Commonwealth shall, where seated lands, underlaid with coal, are divided by county, township or borough lines, the ownership of which coal has been severed from the ownership of the overlying strata or surface, assess each division of said coal in the county, township or borough in which it actually lies."